

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**VIRNETX INC., and  
LEIDOS, INC.,**

**Plaintiffs,**

**v.**

**APPLE INC.,**

**Defendant.**

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**No. 6:12-cv-00855-RWS**

**JURY TRIAL DEMANDED**

**JOINT STIPULATION CONCERNING APPLE’S iMESSAGE COUNTERCLAIMS**

On April 10, 2018, Apple moved for judgment as a matter of law (“JMOL”) under Federal Rule of Civil Procedure 50(a), requesting that the Court enter judgment of no infringement based on Apple’s iMessage noninfringement counterclaim. 4/10/2018 Trial Tr. 111:1–17. The Court carried Apple’s motion for consideration in connection with post-trial briefing. *Id.* at 113:1–6.

On May 31, 2018, Apple renewed its motion for JMOL under Federal Rule of Civil Procedure 50(b), requesting that the Court enter judgment of no infringement based on Apple’s iMessage noninfringement counterclaim. Dkt. 775 at 14–15.

On August 30, 2018, the Court denied Apple’s renewed motion for JMOL of no infringement based on Apple’s iMessage counterclaim. Dkt. 798 at 24. In denying Apple’s motion, the Court stated that, with respect to iMessage, “Apple’s counterclaim for declaratory judgment of noninfringement has not been dismissed.” *Id.*

On August 30, 2018, the Court entered final judgment. Dkt. 801. The final judgment did not expressly state the disposition of Apple's counterclaim of noninfringement for iMessage. *Id.*

For the avoidance of doubt, the parties stipulate that the Court's August 30, 2018 order and judgment dismissed Apple's counterclaim for declaratory judgment of noninfringement as to iMessage without prejudice. To the extent necessary, the parties stipulate to dismissal without prejudice under Rule 41(a)(1)(A)(ii) and (c) of Apple's counterclaim for declaratory judgment of noninfringement as to iMessage.

Dated: September 27, 2018

/s/ Bradley W. Caldwell (with permission)

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service on this 27th day of September, 2018. Local Rule CV-5(a)(3)(A).

/s/ Joseph A. Loy